

Don't discriminate

We are now in a new age of equality, with the Equality Act in force since October 1.

It is commonly thought that the Act does no more than consolidate existing anti-discrimination laws (nine all told) in a tidying-up exercise, but in fact it also extends equality law in some areas.

For example, it prohibits discrimination on the grounds of age, and strengthens the law in other areas.

So, where does an agent stand if a landlord specifies 'no students', 'no benefit tenants' or 'no pets'?

Could the agent and landlord be accused of indirect discrimination? By specifying 'no students', could that be indirect discrimination on the grounds of age, as most students are younger people? In specifying 'no benefit tenants', would that be discrimination? And in specifying 'no pets', would that discriminate against disabled people who use assistance dogs?

The Act says that someone (name A) indirectly discriminates against another person (name B) on the grounds of a 'protected characteristic'.

Characteristics protected by anti-discrimination law are someone's sex, race, disability, age, pregnancy and maternity, sexual orientation, religion or belief, gender reassignment, marriage or civil partnership.

Discrimination occurs when person A "applies a provision, criterion or practice to B and to others some of whom do not share B's protected characteristic the provision, criterion or practice puts (or would put) B and others who share his/her prohibited characteristic at a particular disadvantage, and A cannot justify the provision, criterion or practice as a proportionate means of achieving a legitimate aim". In other words, you must not place someone at an unjustifiable disadvantage.

What are the implications of the Equality Act for agents when accepting instructions from landlords?

So, what would happen if you declined to let a property to students? Fortunately, that is straightforward.

There is no possibility of anyone challenging this on the basis that this discriminates on the grounds of age. This is because Part 4 of the Equality Act 2010 which deals with lettings does not apply to the protected characteristics of age, or marriage and civil partnership. It is therefore not unlawful to discriminate, whether directly or indirectly, on the grounds of age when you let, sell or otherwise dispose of, premises.

Pets

Refusing to let properties to people with pets is more problematic, as it could clearly adversely affect tenants who have guide dogs or assistance dogs. It would be unlawful not to let to a blind person because they had a guide dog, unless you could justify it.

The Equality Act 2010 makes it unlawful for person A to treat a disabled person (B) unfavourably because of something that is a result of B's disability unless A can show that the treatment was justified as a proportionate means of achieving a legitimate aim.

Having a guide dog is a consequence of being blind.

Best advice is that if you or the landlord want to ban pets, you should specify "except assistance dogs".

There could be circumstances where a landlord might try to justify not having any dog in the premises, for example in a flat in a high-rise block.

However, such justification would be very difficult to prove. It is now universal practice for establishments such as shops and restaurants that ban

dogs to make an exception for assistance dogs, so there would appear to be no case for landlords to justify a ban.

Furthermore, the new Equality Act also makes it an offence for taxi drivers and private car hire drivers to refuse to take an assistance dog. It is also an offence for them to make an extra charge for it.

Benefits

For a landlord to stipulate no tenants on benefit is much less straightforward. The danger here is the possibility of a challenge on the grounds of indirectly discriminating against disabled people – the assumption being that someone on benefits is more likely to have a disability than someone not on benefit.

For a claim to succeed, there would have to be statistical proof that disabled people are significantly more likely to be on benefits than people who are not disabled.

The landlord or agent would then have to demonstrate that refusing to let to benefit claimants is a proportionate means of achieving a legitimate aim. That would be virtually impossible to prove, so there could be a breach of the Equality Act.

Hassle

Solicitor Richard Jones, of Bury & Walker in Leeds, argues that in view of the furore surrounding Local Housing Allowance, the landlord might be able to justify excluding housing benefit tenants.

The landlord could say that he or she does not want to get involved with all the hassle and run the risk of arrears, as LHA is paid to the tenant.

Jones, who advises the Residential Landlords Association, argues that the legitimate aim would be the landlord protecting his or her own business.

However, in the absence of case law under the new Act, it would clearly be best to tread carefully and, if necessary, take your own advice. ■



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